

Burma's 2010 Elections: Implications of the New Constitution and Election Laws

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Summary

On an undisclosed date in 2010, Burma plans to hold its first parliamentary elections in 20 years. The elections are to be held under a new constitution, supposedly approved in a national referendum held in 2008 in the immediate aftermath of the widespread destruction caused by Cyclone Nargis. The official results of the constitutional referendum are widely seen as fraudulent, but despite significant domestic and international opposition, Burma's ruling military junta—the State Peace and Development Council (SPDC)—has insisted on conducting the polls as part of what it calls a path to “disciplined democracy.”

On March 9, 2010, the SPDC released five new laws for the pending parliamentary elections. Three of the laws are about the three main types of parliaments stipulated in the constitution—the two houses of the national parliament (*Pyidaungsu Hluttaw*) and the Regional or State parliaments. The fourth law—the Political Parties Registration Law—sets conditions for the registration and operation of political parties in Burma; the fifth law establishes a Union Election Commission to supervise the parliamentary elections and political parties.

The new laws were quickly subjected to sharp criticism, both domestically and overseas. In particular, the law on political parties was widely denounced for placing unreasonable restrictions on the participation of many opposition political leaders and Burma's Buddhist monks and nuns. U.S. Assistant Secretary of State Philip J. Crowley said the Political Parties Registration Law “makes a mockery of the democratic process and ensures that the upcoming elections will be devoid of credibility.” There have also been objections to the terms of the Union Election Commission Law and the 17 people subsequently appointed to the commission by the SPDC.

In late September 2009, the Obama Administration adopted a new policy on Burma. The policy keeps most of the elements of the Burma policies of the last two administrations in place, but adds a willingness to engage in direct dialogue with the SPDC on how to promote democracy and human rights in Burma, and greater cooperation on international security issues, such as counternarcotics efforts and nuclear nonproliferation. The Obama Administration accepts that little progress has been made during the seven months that the new policy has been in effect, but has indicated that it will remain in place for now.

There are signs of concern among Members of Congress about the dearth of progress in Burma towards democracy and greater respect for human rights. Nine Senators sent a letter to President Obama on March 26, 2010, urging the imposition of additional economic sanctions on the SPDC in light of “a set of profoundly troubling election laws.” However, another Senator perceives “several substantive gestures” on the part of the SPDC, and suggests it is time to increase engagement with the Burmese government.

The 111th Congress has already taken action with respect to Burma, such as renewing the Burmese Freedom and Democracy Act of 2003. If it were to determine that additional actions should be taken, there are several alternatives available. Among those alternatives are holding hearings or seminars on the political situation in Burma, pushing the Obama Administration to implement existing sanctions on Burma more vigorously, and adding or removing existing sanctions.

This report will be updated as circumstances warrant.

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Overview

On an undisclosed date in 2010, Burma (Myanmar) is to hold its first national parliamentary elections since the ill-fated vote in 1990.¹ Depending on the manner in which the election is held and the outcome of the vote, Burma's prospects for a more democratic government may be at stake. The current ruling military junta—the State Development and Peace Council (SPDC)—is promoting the 2010 election as the fifth step in what it calls a seven-step roadmap to “disciplined democracy.” Burma's leading opposition groups are highly skeptical of the SPDC and the 2010 elections, concerned that the SPDC will use a new constitution promulgated in 2008 and legal restrictions placed on participation in the 2010 elections to maintain its stranglehold on power.

Burma's 2010 elections might also pose a challenge to the Obama Administration's policy towards Burma. In September 2009, the U.S. State Department announced a new policy towards Burma that continued the existing political and economic sanctions but added a willingness to engage in high-level discussions with representatives of the SPDC. Previous U.S. administrations had generally refused to participate in high-level discussions with the SPDC.

Burma's two most recent experiences with nationwide plebiscites do not augur well for the democratization of Burma. In May 1990, the military junta—then known as the State Law and Order Restoration Council (SLORC)—refused to relinquish power when Burma's leading opposition party, the National League for Democracy (NLD), won 392 of the 485 seats in a parliamentary election. In May 2008, the SPDC held a referendum on a new constitution despite the widespread devastation caused by Cyclone Nargis only a few days before the vote.² Five days after the referendum, the SPDC announced that over 98% of the eligible voters had cast votes, and that over 92% had voted in favor of the adoption of the constitution—results that were widely viewed as fraudulent.

For the 111th Congress, the 2010 elections may be a strong indicator of the potential for political change in Burma. If, despite political restrictions, the SPDC conducts comparatively free and fair elections with official outcomes that appear to represent the views of the public, there may be calls from the Obama Administration and some sources for Congress to scale back the sanctions. However, if the SPDC manipulates the elections to prevent full participation and/or releases biased or inaccurate results, Congress may choose to increase the political and economic pressure on Burma's ruling military junta.

¹ The 1990 parliamentary election was an overwhelming victory for the National League for Democracy (NLD) and its leader, Aung San Suu Kyi. However, following the announcement of the results of the election, Burma's ruling military junta refused to transfer power to civilian power. For more information, see James F. Guyot, “Myanmar in 1990: The Unconsummated Election,” *Asian Survey*, Vol. 31, No. 2, (Feb. 1991), pp. 205-211.

² For more information regarding Cyclone Nargis and Burma's constitutional referendum, see CRS Report RL34481, *Cyclone Nargis and Burma's Constitutional Referendum*, by Michael F. Martin and Rhoda Margesson.

The Road to the 2010 Elections

The path that has led Burma to the 2010 elections can be traced back to August 30, 2003, when Burma's prime minister, General Khin Nyunt, announced the SPDC's seven-step roadmap to democracy (see text box). Between 2004 and 2008, the SPDC progressed through the first three steps of the roadmap, despite significant opposition from various political organizations within Burma and around the world. The adjourned National Convention reconvened in May 2004, after an eight-year break precipitated by an NLD walkout in response to an SPDC crackdown on its political opponents.³ Despite a continued NLD boycott, the National Convention in September 2007 completed the second step of the roadmap—a draft of the process for transforming Burma into a “disciplined democracy.”⁴ The SPDC then appointed in October 2007 a special commission to draft the text of a proposed new constitution, based on the work of the National Assembly. In February 2008, the SPDC announced that the drafting of the new constitution was completed. Much of the opposition to the National Convention, its drafting of a new constitution, and the SPDC's “roadmap to democracy,” stems from the military's response to the 1990 parliamentary elections.

The SPDC's Seven-Step Roadmap to Democracy

(As described by Prime Minister General Khin Nyunt on August 30, 2003)

1. Reconvene the National Convention (adjourned in 1996)
2. Step-by-step implementation of the process necessary for the emergence of a genuine and disciplined democratic system
3. Draft a new constitution based on the principles laid out the National Convention
4. Adopt the constitution via a national referendum
5. Hold free and fair elections to constitute a national legislative assembly based in accordance with the new constitution
6. Convene the new national legislative assembly
7. Build a modern, developed, and democratic nation

The 1990 Parliamentary Elections

On May 27, 1990, Burma held national elections to select a new parliament as the first step to return the country to civilian rule.⁵ After World War II, the former British colony enjoyed a brief period of civilian rule, which was ended by a military coup d'état in 1958. For most of the next 30 years, Burma lived under military rule.⁶ In the summer of 1988, the people of Burma arose in opposition to the ruling military government, in what is sometimes called the “8888 Uprising.” The name refers to the tragic events of August 8, 1988, when soldiers opened fire on the civilian

³ It was not the only hiatus for the National Convention. For example, it adjourned in January 1993 after delegates refused to endorse a clause stating that the military had a leading role in Burma's political system. The National Assembly remained in recess until November 1995.

⁴ The phrase, “disciplined democracy,” or close variations of it, have been used by SDPC leaders in speeches since Khin Nyunt's speech laying out the seven-step roadmap to democracy on August 30, 2003.

⁵ There has been much debate over the precise nature of 1990 elections. Some scholars maintain that the 1990 election to select the 492 members of the Pyithu Hluttaw, or Union Assembly, was the first step in the formation of a civilian government. Others assert that the 1990 election was to create a constitutional convention, not a parliament. In either case, the military refused to allow the elected Pyithu Hluttaw to meet and remained in power.

⁶ There was a brief period of civilian rule from April 1960 to March 1962, under Prime Minister U Nu and the “Clean” faction of Burma's Anti-Fascist People's Freedom League. On March 2, 1962, General Ne Win led a military coup d'état that overthrew the civilian government.

protesters, killing an unknown number of people, and started a brutal crackdown on opposition groups and their leaders.

On September 18, 1988, the 19-member State Law and Order Restoration Council (SLORC) assumed power. While their crackdown continued, SLORC announced it did not wish to remain in power for long, and promised to hold multiparty democratic general elections. The date for elections was set for May 27, 1990.

Despite continued suppression and harassment of opposition parties and their candidates, the national vote was held as scheduled. In a surprise to virtually everyone, the leading opposition party, the National League for Democracy, and its leader, Aung San Suu Kyi, won a landslide victory. Official results of the 1990 elections had the NLD winning 392 of the 485 contested seats in the new parliament. SLORC's party, the National Unity Party (NUP), won 10 seats.⁷ Two other opposition parties—the ethnic-based Shan Nationalities League for Democracy and the Arakan League for Democracy—won 23 and 11 seats, respectively.

Following the election, Aung San Suu Kyi and other opposition leaders pressed SLORC to accept the popular will and transfer power to the new parliament. SLORC responded by arresting many of the opposition leaders—many of whom had won a seat in the elections—and imposing ever more restraints of civil liberties.

The Constitutional Referendum of 2008

On February 9, 2008, the SPDC announced a national referendum on its draft constitution was to be held in May 2008.⁸ On the same day, the SPDC also declared, “In accordance with the forthcoming State Constitution, the multi-party democracy [sic] general elections will be held in 2010.”⁹

On February 26, 2008, the SPDC released a new law governing “the approval of the draft constitution.”¹⁰ The law barred the following people from voting: members of religious orders; people of unsound mind; persons in prison or convicted of a crime; people illegally abroad; and foreigners. The law also allowed the postponement or dissolution of a vote “if [a] free and fair referendum may not be held stably due to natural disaster or situation affecting the security, or any other disaster.” The SPDC began providing copies of the 194-page draft constitution to the public on April 9, 2008, at a cost of 1,000 kyat (\$1.50) and announced the date for the referendum—May 10, 2008.

On May 2, 2008, Cyclone Nargis, a category 3 cyclone,¹¹ caused widespread damage across much of southern and central Burma. Initial reports estimated the death toll at 351 people, but that

⁷ The NLD margin of victory was smaller in terms of popular votes. The NLD received 59.9% of the votes, while the NUP received 21.2%. Because the election was done under a “first past the post” process, NLD candidates frequently won seats even though they did not receive a majority of the vote.

⁸ State Peace and Development Council, Announcement No. 1/2008, February 9, 2008, available at <http://www.mewashingtondc.com/Myanmar%20Govt%20Announcement%20No%201%20&%202%20of%202008.pdf>.

⁹ State Peace and Development Council, Announcement No. 2/2008, February 9, 2008, available at <http://www.mewashingtondc.com/Myanmar%20Govt%20Announcement%20No%201%20&%202%20of%202008.pdf>.

¹⁰ “The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar,” official translation published in *The New Light of Myanmar*, February 28, 2008, pages 8-11.

¹¹ Tropical storms in the Indian Ocean are generally referred to as cyclones, whereas tropical storms in the western

number quickly rose to over 22,500, with 41,000 people reported as missing.¹² Official Burmese figures were later revised to 84,537 dead and 53,836 missing.¹³

Despite the widespread destruction caused by Cyclone Nargis, the SPDC decided to not invoke the natural disaster provisions of the referendum law. On May 6, 2008, the SPDC announced that the vote on the proposed constitution would proceed as planned in most of Burma, but that the vote would be delayed until May 24, 2008, for most of the townships around Rangoon and in seven of the townships in the Irrawaddy region.¹⁴ The SPDC's decision to proceed with the referendum was met with strenuous objection by Burma's leading opposition groups, as well as by the United States and several other nations.

There are conflicting accounts about the conduct and outcome of the referendum. The SPDC reported a heavy turnout on both dates, with few voting irregularities. Opposition groups say the turnout was comparatively light, with many reported cases of voting irregularities, such as pre-marked ballots, voter intimidation, and other techniques to influence the outcome of the referendum.¹⁵ On May 29, 2008, the SPDC issued Announcement No. 7/2008, reporting that 98.12% of the 27,288,827 eligible voters had cast votes, and that 92.48% had voted in favor of the adoption of the constitution.¹⁶ On the basis of these official results, the SPDC declared that the new constitution had been ratified.

Key Features of the 2008 Constitution¹⁷

The 2008 constitution is a 213-page, detailed document. It establishes the Republic of the Union of Myanmar as a perpetual union of seven states and seven regions¹⁸ under "a genuine, disciplined multi-party democratic system." Although "the Sovereign power of the Union is derived from the citizens," the constitution also stipulates that one of its objectives is "enabling the Defence Services to be able to participate in the national political leadership role of the State."

Pacific Ocean are referred to as typhoons and in the eastern Pacific Ocean and the Atlantic Ocean, they are called hurricanes. A category 3 cyclone has "very destructive" winds with gusts of 170-225 kph (105-141 mph).

¹² "Hundreds Killed by Burma Cyclone," *BBC*, May 4, 2008; Aye Aye Win, "Nearly 4,000 People Dead; 3,000 People Missing," *Associated Press*, May 5, 2008; "Burmese Storm Toll 'Tops 10,000,'" *BBC*, May 5, 2008; "Burma's Cyclone Death Toll Soars," *BBC*, May 6, 2008, and Aung Hla Tun, "Myanmar Cyclone Toll Climbs to Nearly 22,500," *Reuters*, May 6, 2008.

¹³ "84,500 Confirmed Death from Cyclone Nargis," *Associated Press*, June 24, 2008; and "Official: Myanmar Cyclone Death Toll Mounts to 84,537," *Xinhua*, June 24, 2008.

¹⁴ Jocelyn Gecker, "Vote Delayed in a Few Worst Cyclone-hit Areas but the Rest Will Go Ahead," *Associated Press*, May 6, 2008.

¹⁵ The human rights organization, *Dictator Watch*, reported on March 26, 2010, that a Burmese military officer claims to have actively participated in vote rigging in the 2008 referendum by destroying "no" votes and replacing them with false "yes" votes. According to the officer, over 50% of the authentic ballots were marked "no." The officer also claims that the SPDC plans on using similar techniques to rig the 2010 parliamentary elections. For more details, see Roland Watson, "Intelligence from Burma Police Defector," *Dictator Watch*, March 26, 2010.

¹⁶ "Myanmar Ratifies and Promulgates Constitution," *New Light of Myanmar*, May 30, 2008.

¹⁷ Citations in this section are from an official English version of the 2008 constitution published by Burma's Ministry of Information, available online at http://burmadigest.info/wp-content/uploads/2008/11/myanmar_constitution-2008-en.pdf.

¹⁸ The seven states are Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan; the seven regions are Ayeyawady, Bago, Magway, Mandalay, Sagaing, Taninthayi, and Yangon. The constitution also provides that the new capital Nay Pyi Taw be designated as a "Union territory" under the direct administration of Burma's President.

The 2008 constitution creates three equal branches of the State—the legislative, executive, and judicial branches—under a parliamentary system. The legislative branch is empowered to consider and approve legislation. It is headed by a national parliament (*Pyidaungsu Hluttaw*) with two chambers—the Union Assembly (*Pyithu Hluttaw*), with a maximum of 440 members selected by districts based on population, and the National Assembly (*Amyotha Hluttaw*), with a maximum of 224 members selected by the regions or states. Members of the *Pyidaungsu Hluttaw* serve terms of five years. Each chamber is to select a speaker from amongst its members. The constitution also creates Regional and State *Hluttaws*. In each of the *Hluttaws*, a quarter of the seats are to be appointed by the commander-in-chief of Burma's Defence Services.

Burma's president is the head of the executive branch. The president's two main powers are to enforce the law and to promulgate ordinances, subject to the approval of the national parliament. The president can also designate ministries, enter into treaties, and take military action (including declaring war or making peace), subject to the assent of the national parliament.

The constitution also provides for two vice presidents. The president and two vice presidents are selected by the parliament as a whole after each chamber of the parliament separately nominates one candidate, and the members of the national parliament appointed by the commander-in-chief of Burma's Defence Services nominate a third candidate. The terms of office for the president and vice presidents are five years; they are limited to two terms in office.

Within the executive branch, the constitution also establishes the "National Defence and Security Council" (NDSC), consisting of the president; the two vice presidents; the speakers of each chamber of the national parliament; the commander-in-chief and deputy commander-in-chief of the Defence Services; and the ministers of border affairs, defence, foreign affairs, and home affairs. According to the constitution, the four ministers on the NDSC must be active military personnel. Chapter XI of the constitution gives the president the authority, after coordinating with the NDSC, to declare a state of emergency in all or part of Burma, and transfer all legislative, executive, and judicial authority to the commander-in-chief of Defence Services.

Burma's judicial branch is to consist of a Supreme Court, High Courts for each of the 14 states or regions, and lower level courts. Justices of the Supreme Court are nominated by the president and approved by the parliament as a whole. Burma's constitution provides for a separate Constitutional Tribunal of the Union to adjudicate cases interpreting the constitution or determining the constitutionality of laws passed by the parliament.

The 2008 constitution sets a number of conditions on persons holding public office in all three branches of the government. These include age requirements, natural citizenship for any person and both of her/his parents, and minimum residency requirements. It also bars a person who has dual citizenship, or has a close relative who is a foreign national from holding public office, effectively preventing opposition leader Aung San Suu Kyi from running for office because she was married to a British citizen and has two sons who are British nationals. The constitution has additional disqualification conditions for serving in parliament, including serving a prison term; having committed certain types of offenses; being of unsound mind; insolvency; membership in a religious order; and being a civil servant (with an exception for Defence Services personnel).

Under the 2008 constitution, national legislation is to be considered by both chambers of the parliament separately. If and when a common version of a bill is approved by both chambers, it is sent to the president for approval. The president can either approve the bill or return it to the parliament with comments for reconsideration. If the parliament approves the bill a second time, with or without incorporating the president's comments, it becomes law.

Chapter VIII lists the rights and duties of the citizens of Burma. It provides for and protects a wide variety of human and civil rights, with an occasional qualification. For example, the

freedom of religion can be limited in cases where laws are passed “for the purpose of public welfare or reform.” Another provision of the constitution forbids “the abuse of religion for political purposes.” The constitution also allows the suspension of certain civil liberties at times of war, foreign invasion, or insurrection.

Chapter IX of the constitution contains provisions governing elections. Suffrage is provided to all Burmese citizens 18 years old or older, regardless of ethnicity with a few notable exceptions. People who are members of religious orders, serving prison sentences, declared of unsound mind, insolvent or otherwise declared ineligible based on election laws are disenfranchised. Chapter IX also establishes the Union Election Commission, which is responsible for conducting, supervising, and determining the results of parliamentary (*hluttaw*) elections.

The constitution includes a separate chapter (Chapter X) regarding political parties. In particular, the constitution requires political parties to register with the government and abide by the constitution and laws of the country. It also prohibits political parties from receiving direct and indirect “assistance from a foreign government, a religious association, other association or a person from a foreign country.”

To amend the major provisions of the constitution requires the approval of over 75% of the members of the parliament as a whole, which effectively gives the military veto power over constitutional amendments.

The 2010 Elections

The date on which the 2010 parliamentary elections are to be held has not yet been announced by the SPDC. The military junta released five laws on March 9, 2010, that will govern the conduct of the 2010 election. They are (1) a law establishing the Union Election Commission; (2) a law setting the conditions for registering political parties to participate in the election; (3) a law concerning the election of the members of the *Pyithu Hluttaw*; (4) a law concerning the election of the members of the *Amyotha Hluttaw*; and (5) a law concerning the election of members of the state or regional *Hluttaws*. The new election laws have been sharply criticized by Burma’s leading opposition groups. They also generally received a cool reception by the international community.

The Election Laws and Regulations¹⁹

The 2010 election laws are comparatively similar to those issued before the 1990 election, with some modifications to reflect provisions in the 2008 constitution. Most of the controversy surrounding Burma’s new election laws has focused on certain provisions in the law on political parties and the Union Election Commission. The three laws concerning the election of members of the various *hluttaws*, however, do contain provisions that have implications for the possibility of holding free and fair elections in Burma.

¹⁹ Citations of Burmese elections laws in this section are unofficial translations provided by Network Myanmar (www.networkmyanmar.org).

The Political Parties Registration Law

The Political Parties Registration Law requires that all political parties with 15 or more members register with the Union Election Commission. The party's registration must include the party's official name, flag, seal, constitution and regulations, party program and ideology, and detailed identification information about the party leadership. In its registration application, the political party must promise to safeguard and maintain the integrity of Burma, its constitution and its laws, as well as the "peace and tranquility" of the nation.

If a previously existing political party fails to register with the Union Election Commission within 60 days of the promulgation of the law—or, by May 7, 2010—the political party will be considered illegal and ineligible to participate in the 2010 election. No specific application deadline has been set for new political parties. Political parties must also contest in at least three constituencies in the general election for the *hluttaws*.

The law prohibits political parties from "directly or indirectly using money, buildings, vehicles and property owned by the State," as well as "directly or indirectly the support of money, land, housing, buildings, vehicles, property, so forth" from governments, religious organizations or other organizations of foreign countries. In addition, political parties cannot "abuse religion for political purposes."

The law also sets conditions on who can be a member of a political party. A person must be a Burmese citizen at least 18 years old to join a political party.²⁰ A person can only join one political party. Among the more controversial conditions set on party membership are the following: members of religious orders are prohibited; civil servants are prohibited; persons serving prison terms are prohibited; and persons with foreign citizenship are prohibited. Political parties that intentionally conceal prohibited party members may be deregistered by the Union Election Commission. The Union Election Commission also has the power to audit the financial records of political parties.

Union Election Commission Law

As required by the constitution, the law creates the Union Election Commission, and gives it the authority to supervise the *hluttaw* elections and Burma's political parties. The Union Election Commission has the power to create subcommissions, delineate constituencies, compile voting lists, certify election results, and form Election Courts to hear electoral disputes. The decisions of the Union Election Commission are final, and cannot be appealed to Burma's judicial courts.

A member of the Union Election Commission must be at least 50 years old; be determined to have a "good reputation among the people" by the SPDC; possess dignity and integrity; be "well-experienced," and be "loyal to the State and its citizens." Commission members cannot be a member of a political party, hold any office, or draw a "salary, allowances, or supplements."

The *Hluttaw* Election Laws

The other three laws released on March 9, 2010—the *Amyotha Hluttaw* Election Law, the *Pyithu Hluttaw* Election Law, and the Region *Hluttaw* or State *Hluttaw* Election Law—confirm the

²⁰ Citizens include native-born, naturalized or guest citizens, or holders of temporary identification documents.

number of seats for each type of *hluttaw*, establish qualifications for eligible voters, set criteria for candidates, and specify other provisions related to the conduct of the elections.

The *Amyotha Hluttaw* Election Law stipulates that there will be 12 representatives from each region or state, and 56 members appointed by the commander-in-chief of the Defense Services. The *Pyithu Hluttaw* Election Law provides for 330 seats which are to be elected based on Burma's townships, and 110 to be selected by the commander-in-chief of the Defense Services. The size of the Region or State *Hluttaws* is determined by a process that includes at least two representatives from each township, members elected based on Burma's recognized "national races," and members appointed by commander-in-chief of the Defense Services.

To vote in the parliamentary elections, a person must be a Burmese citizen at least 18 years old and listed on the constituency's electoral role. Foreigners or naturalized citizens of other countries; members of religious orders; and people serving prison terms, insolvent, or "adjudged to be of unsound mind" are not entitled to vote.

Each *hluttaw* law sets a minimum age for representatives. For the *Amyotha Hluttaw*, representatives must be 30 years old or older. For the *Pyithu Hluttaw*, and the Region or State *Hluttaws*, the minimum age is 25. All *Hluttaw* representatives must have been residing in Burma for a minimum of at least 10 continuous years prior to the election. Residency exemptions are provided for individuals residing overseas in an official capacity for the government. In addition, both of the candidate's parents must have been Burmese citizens at the time of their birth.

The Election Commission

Three days after releasing the five election laws, the SPDC announced the 17 members of the Union Election Commission.²¹ According to the opposition newspaper, the *Irrawaddy*, "The majority of the chosen members are retired government officials who served under the ruling junta and took retirement in recent years."²² Several of the members of the Union Election Council—including its Chairman Thein Soe—are or have been on the European Union's sanction list of Burmese officials who are not allowed access into the European Union and/or whose assets are frozen. One of the election commission members—Aung Myint—appears on the U.S. Treasury's "Special Designated Nationals" list.²³

The Response in Burma

The initial response in Burma to the five election laws and the list of appointees to the Union Election Commission was mostly negative. In the weeks since the laws' release, several leading political parties—including the National League for Democracy (NLD)—have decided not to participate in the election. However, there have been a number of political parties that have submitted the required registration materials, including some ethnic-based parties.

²¹ An English translation of the announcement was published in the March 12, 2010, edition of *the New Light of Myanmar*, the SPDC-run newspaper.

²² "Election Commission Members from Various Backgrounds," *The Irrawaddy*, March 12, 2010.

²³ A separate "visa ban" list that is supposed to be maintained by the State Department under the provisions of the Burmese Freedom and Democracy Act of 2003 has not been made available to the public and Congress. Also, the apparent discrepancy between the E.U. and U.S. list brings into question compliance with section 5(d)(2) of the Tom Lantos Block Burmese JADE Act of 2008, that requires the President to consider "data already obtained by other countries and entities that apply sanctions against Burma, such as the Australian Government and the European Union."

Burmese Comments on the Election Laws

Burmese criticism has largely focused on various provisions that effectively barred or inhibited the participation of leading opposition figures, such as Aung San Suu Kyi. Opposition leaders who are serving prison sentences (such as Aung San Suu Kyi) cannot run for office, vote in the elections, or be members of political parties. People who have lived overseas any time during the last 10 years cannot run for office, effectively eliminating the participation of Burma's leaders-in-exile. Burma's politically active Buddhist monks and nuns—key organizers of the protests of 2007²⁴—are not allowed to join a political party, vote in the elections, or run for office.

Comments also pointed to a perceived bias in the Political Parties Registration Law against opposition parties. Political parties that violate restrictions—such as the restriction on party members or the prohibition on foreign financial support—may be declared illegal and prohibited from participating in the elections. In addition, the cost of registering a political party—300,000 kyat or about \$300—plus 500,000 kyat (\$500) per candidate, may inhibit the participation of Burma's poor.

The election laws are also viewed as favoring the military. In addition to setting aside at least 25% of the seats in every *hluttaw* for appointees by the commander-in-chief of the Defence Services, military personnel are the only government employees allowed to form political parties, vote, or run for office, increasing the likelihood that the military will constitute more than 25% of the *hluataws*.

There has also been criticism of the Union Election Commission Law and the people appointed to the commission. To some, the membership of the commission and the lack of appeal to the commission's decisions effectively turn the Union Election Commission into an instrument that the SPDC will likely use to influence the election results.

Political Party Registration

The Political Party Registration Law requires all existing political parties that wish to participate in the 2010 elections to submit registration materials to the Union Election Commission (UEC) within 60 days. Since the law was promulgated, several political parties or groups have announced that they do not intend to register, while a number have submitted their registration materials (see **Table 1**, below).

The NLD's central executive committee unanimously voted against participating in the 2010 elections on March 29, 2010.²⁵ The decision came a week after NLD leader Aung San Suu Kyi stated that she "would not even think of registering under these unjust laws."²⁶ In the weeks prior to Suu Kyi's statement, there were reported disagreements among the NLD leadership about participation in the election. NLD Chairman Aung Shwe and NLD spokesperson Khin Maung Swe reportedly supported registering the party, but NLD leader Win Tin, who was released from

²⁴ In the autumn of 2007, a series of popular protests swept across Burma. Initially a response to economic measures implemented by the SPDC, the nature of the protests shifted after Burmese soldiers shot and killed a number of Buddhist monks participating in a peaceful march. The protests were quelled by the end of September, after an unknown number of deaths and the detention of several thousand protesters, including hundreds of Buddhist monks. For more information about the 2007 protests, see CRS Congressional Distribution Memo CD071227, "Background Information on the Recent Protests in Burma and Their Aftermath," December 20, 2007, by Michael F. Martin.

²⁵ Aung Hla Tun, "Suu Kyi's Party Says Won't Stand in Myanmar Polls," *Reuters*, March 30, 2010.

²⁶ Ba Kuang, "Suu Kyi Against NLD Joining Elections," *The Irrawaddy*, March 23, 2010.

Insein Prison on September 23, 2008, after 19 years in jail, openly opposed registering the party.²⁷ On April 29, 2010, Aung San Suu Kyi and the NLD filed an appeal to Burma's Supreme Court to annul the provisions in the Political Party Registration Law that would require the NLD to reregister as a political party to participate in the 2010 elections. The Supreme Court announced its decision not to hear the case on May 6, 2010.

²⁷ Ba Kaung, "Divisions over Party Registration Surfacing in NLD," *The Irrawaddy*, March 17, 2010.

Table 1. Status of Political Parties in Burma as of June 2, 2010

(numbers following party names indicate number of seats—out of a possible 485—won in the 1990 parliamentary election)

Parties or groups that have announced they will not register	Parties that have registered but not yet approved by UEC	Parties that have been approved by the UEC
Arakan League for Democracy—11	Kachin State Progressive Party	88 Generation Students Youths - Union of Myanmar
Arakan Liberation Party	Kaman National Progressive Party	All Mon Region Democratic Party
Arakan National Congress	National Democratic Force ^a	Chin National Party
Chin National League for Democracy—3	National Solidarity and Development Party	Chin Progressive Party
Democratic Karen Buddhist Army	Northern Shan State Progressive Party	Democracy and Peace Party
Kachin Independent Organization	Rakhine Nationals Progressive Party	Democratic Party - Myanmar—I
Kachin National Organization	Regional Development Party (Pyay)	Difference and Peace Party
Karen National Union/Karen National Liberation Army Peace Council		Ethnic National Development Party Inn
Karenni National Progressive Party		National Development Party
Kayan New Land Party		Kayan National Party
Mara People's Party—I		Kayin People's Party [a.k.a. Karen-People Party]
Mon National Democratic Front—5		Khami National Development Party
National League for Democracy—392		Kokang Democracy and Unity Party
New Mon State Party		Lahu National Development Party—I
Shan Nationalities League for Democracy—23		Modern People Party
Zomi National Congress—2		Mro National Party
		Mro or Khami National Solidarity Organization—I
		Myanmar Democracy Congress
		Myanmar New Society Democratic Party
		National Democratic Party for Development
		National Political Alliances League
		National Unity Party—I0
		New Era People's Party
		Pa-O National Organization—3
		Peace and Diversity Party
		Phalon-Sawaw Democratic Party [a.k.a. Pwo-Sgaw Democratic Party]
		Rakhine Nationalities Development Party
		Rakhine State National Force of Myanmar
		Shan Nationals Democratic Party
		Taaung (Palaung) National Party
		Union Democratic Party
		Union Kayin League [a.k.a. Union Karen League]
		Union of Myanmar Federation of National Politics
		Union Solidarity and Development Party
		United Democracy Party (Kachin State)
		United Democratic Party
		Wa Democratic Party
		Wa National Unity Party
		Wunthanu National League for Democracy

Source: *New Light of Myanmar, The Irrawaddy, Mizzima*

- a. The National Democratic Force consists of NLD members who have decided to form a new political party.

The decision of the NLD not to register may have a far-reaching impact on the credibility of the 2010 elections. Political parties or groups have apparently been influenced by the NLD's decision and have subsequently stated they will not participate in the election. The Mon National Democratic Front, for example, voted not to register for the election the day after the NLD made its decision. Two weeks after the NLD's decision, only one of the top five parties to win seats in the 1990 elections—the pro-junta National Unity Party—had indicated it would participate in the 2010 election, while three of the top five parties—the NLD, the Arakan League for Democracy and the Mon National Democratic Front—had decided not to participate. Given that these three parties won over 84% of the seats in the 1990 election, their decision not to participate has created a possibly large void in representing the political views of a substantial segment of the Burmese electorate.

There are also signs that the NLD decision has spawned a campaign to boycott the election. It has been reported that clandestine organizations led by Buddhist monks and university students are urging people to boycott the 2010 election in the hopes of preventing the attainment of a 51% voter turnout for the results to be official.²⁸ Members of the NLD have also been circulating materials reminding voters that they have the right to not vote in the 2010 election.²⁹ During the campaign for the constitutional referendum, there was a difference of opinion among the opposition groups on whether people should refuse to vote or vote against the constitution.

On April 29, 2010, the Union Solidarity and Development Party (USDP) submitted its application to the UEC, listing among its members 27 ex-military officers, including Prime Minister General Thein Sein.³⁰ It is unclear if the officers' resignations from the military are sufficient to comply with the provisions of the Political Party Registration Law, or if they also must resign from their ministerial positions. On May 12, 2010, UEC Chairman Thein Soe stated that "ministers are political posts, not state service personnel," and as such, the USDP's formation is in compliance with the law.³¹ If successful in their application to form a political party, this move increases the chances of the military controlling more than 25% of the seats in the parliament. During the daily press briefing on May 4, 2010, Assistant Secretary of State Philip J. Crowley indicated that while the United States would generally support military officers to "take off their uniform and pursue politics and government as civilians," it will wait to see what actions Burma will take to determine "whether this represents just wolves changing to sheep's clothing."³²

After a political party has submitted its registration application, the UEC reviews the submitted materials and determines if the party will be allowed to register as a political party. If approved, the political party has 90 days from the submission of its application to demonstrate that it has the minimum necessary members—1,000 if contesting at the national level and 500 if contesting at the regional or state level—to remain registered as a political party.

The UEC has begun the process of reviewing the applications, and has announced its determination on many of the applications. The reviews of some of the ethnic-based political parties (such as the Kachin State Progressive Party) have taken more time than other parties,

²⁸ Kyaw Kha, "Monks and Students Urge Poll Boycott," *Irrawaddy*, May 26, 2010.

²⁹ Min Niang Thu, "NLD Focuses on Electoral Rights," *Irrawaddy*, May 13, 2010.

³⁰ Kyaw Kha, "PM, Now a Retired General, Leads USDP," *Mizzima*, April 30, 2010.

³¹ "Myanmar Says Formation of Political Party by Government Ministers Lawful," *Xinhua*, May 12, 2010.

³² U.S. Department of State, "Daily Press Briefing," press release, May 4, 2010.

raising doubts about the fairness of the UEC's decisions. It has been suggested that the UEC is intentionally slowing down the approval of the applications from selected political parties to hinder their ability to comply with the minimum membership requirement. The preceding table (see **Table 1**) provides a status report for Burma's political parties as of June 2, 2010.

The International Response

The international response to the five election laws has varied from sharp criticism to mild expressions of disappointment. An official statement by U.N. Secretary-General Ban Ki-moon indicated that a preliminary assessment of the laws "suggests that they do not measure up to the international community's expectations of what is needed for an inclusive political process."³³ The statement also reiterated the Secretary-General's call for "fair, transparent and credible elections in which all citizens of Myanmar, including Daw Aung San Suu Kyi, can freely participate."³⁴

The day after the election laws were released, U.S. Assistant Secretary of State Philip J. Crowley referred to the Political Parties Registration Law as "a step in the wrong direction."³⁵ He also stated that the State Department was "deeply disappointed" that the law excluded political participation by Burma's more than 2,000 political prisoners, including Aung San Suu Kyi, as well as the law's apparent prohibition of Aung San Suu Kyi continuing to be a member of the NLD, if it registers as a political party. Crowley concluded by saying the law "makes a mockery of the democratic process and ensures that the upcoming elections will be devoid of credibility."³⁶

Several other foreign leaders have expressed dissatisfaction or disappointment with the Burmese election laws. Britain's Prime Minister Gordon Brown said of the election laws, "Sadly, the Burmese regime has squandered the opportunity for national reconciliation."³⁷ Australia's Foreign Minister Stephen Smith told reporters, "I don't believe that any election without the National League for Democracy can be a full, free and fair election."³⁸ The Philippines' Foreign Secretary Alberto Romulo stated that the actions of the SPDC were "contrary to the roadmap to democracy that they have pledged to ASEAN and to the world."³⁹ Japan's Foreign Minister Katsuya Okada has indicated that Japan may cancel its plan to expand economic aid to Burma unless Aung San Suu Kyi and other opposition figures are permitted to participate in the 2010 elections.⁴⁰

Some nations have been more restrained in their comments about Burma's election laws. Indonesia's Foreign Minister Marty Natalegawa traveled to Burma in late March to discuss the 2010 elections with Burma's Foreign Minister Nyan Win. Following their meetings, Natalegawa stated "We are trying very hard to ascertain as to what extent this sets [sic] of laws are consistent or inadvertently impede the holding of a multi-party election, an inclusive one and the likes."⁴¹

³³ United Nations Office of the Spokesperson for the Secretary-General, "Statement attributable to the Spokesperson for the Secretary-General on Myanmar," press release, March 10, 2010.

³⁴ Ibid. Note—the term "Daw" is an honorific, and not part of her name.

³⁵ U.S. Department of State, "Daily Press Briefing," press release, March 10, 2010.

³⁶ Ibid.

³⁷ Aung Zaw, "Hypocrisy Replaces Hope after the NLD Decision," *The Irrawaddy*, March 31, 2010.

³⁸ Ibid.

³⁹ "Philippines: Burma Broke Promise to Democratize," *Associated Press*, March 16, 2010.

⁴⁰ "Okada: Let Suu Kyi Run in Elections or No Aid," *Japan Times*, March 28, 2010.

⁴¹ "Indonesia Shares Its Experience with Myanmar on Road to Democracy," *Channel News Asia*, April 8, 2010.

Singapore's Foreign Ministry issued a similar statement, expressing its hope that "it is not too late for all parties to reach a compromise."⁴²

On March 24, 2010, the U.N. Security Council held a closed-door meeting on the Burmese elections. It has been reported that Britain and China clashed over the appropriateness of the body to weigh in on the issue.⁴³ The following day, the informal Group of Friends of Burma⁴⁴ met and agreed that Burma's military junta should release all political prisoners (including Aung San Suu Kyi) and allow them to participate in the 2010 elections.⁴⁵ The Association of Southeast Asian Nations (ASEAN) released a statement following its April 9, 2010, leaders meeting, stating, "We underscored the importance of national reconciliation in Myanmar and the holding of the general election in a free, fair, and inclusive manner, thus contributing to Myanmar's stability and development."⁴⁶

The SPDC's Response

Burma's ruling military junta has used its state-run newspaper, *The New Light of Myanmar*, to rebut some of the criticisms leveled at its election laws, generally by pointing to similarities in other nation's election laws. On March 27 and 28, 2010, the newspaper ran a two-part article written by "A Lawman" enumerating a response to "widespread criticism."⁴⁷ Regarding the powers of the Union Election Commission to oversee the political parties, the article points out that Indonesia grants its election commission similar powers. On the disenfranchisement of people serving prison terms, the article notes that in some countries, people are not allowed to vote for five or six years after their release from prison. It also recalls that Burma's 1947 constitution also had a provision prohibiting people from serving in the parliament for five years after their release from prison. As to members of religious orders, the SPDC has pointed out that past Burmese constitutions and election laws contained similar prohibitions on their participation in elections.

In his address at Burma's 65th Anniversary Armed Forces Day Parade, Senior General Than Shwe, SPDC chairman and commander-in-chief of Defence Services, told the audience that "preparations are being made to be ready in every aspect for a gentle transition to democracy and market-oriented economic system."⁴⁸ He went on to warn that "the improper practice of democracy often leads to anarchic phenomena." Because Burma's democratic transition was only in its initial stages, Than Shwe asked that Burma's political parties "show restraint at a time when the democratization process has yet to reach maturity."

⁴² Aung Zaw, "Hypocrisy Replaces Hope after NLD Decision," *The Irrawaddy*, March 31, 2010.

⁴³ "Security Council Mulls Myanmar's Election Laws," *AFP*, March 24, 2010.

⁴⁴ The Group of Friends of Burma is an informal consultative body organized by the U.N. Secretary-General to develop a shared approach to relations with Burma. The members of the group are Australia, Britain, China, the European Union, France, India, Indonesia, Japan, Norway, Russia, Singapore, South Korea, Thailand, the United States, and Vietnam.

⁴⁵ Bill Varner, "China Urges Burma to Free Political Prisoners," *Sydney Morning Herald*, March 27, 2010.

⁴⁶ Association of Southeast Asian Nations, "Chairman's Statement of the 16th ASEAN Summit 'Towards the ASEAN Community: from Vision to Action'," press release, April 9, 2010.

⁴⁷ A Lawman, "Not to Leave an Evil Legacy Behind," *New Light of Myanmar*, March 27 and 28, 2010.

⁴⁸ "This Year's Elections Represent Only Beginning of Process of Fostering Democracy," *New Light of Myanmar*, March 28, 2010.

The SPDC has also rejected calls to allow international election observers to be present during the upcoming election. UEC Chairman Thein Soe told reporters on May 12, 2010, “The nation has a lot of experience with elections. We do not need election watchdogs to come here.”⁴⁹

The Obama Administration’s Burma Policy

In September 2009, the Obama Administration announced a change in U.S. policy towards Burma after seven months of review, discussion, and consultation. The new element to the Obama policy is the willingness to engage in direct dialogue with the SPDC on how to promote democracy and human rights in Burma, and greater cooperation on international security issues, such as nuclear nonproliferation and counternarcotics efforts.

Outside of the new willingness to engage in direct dialogue, the Obama policy is mostly a continuation of the policies of the two preceding administrations with the same goals—supporting “a unified, peaceful, prosperous, and democratic Burma that respects the human rights of its citizens.”⁵⁰ In order to achieve these goals, the Obama Administration will continue to press Burma to release all its political prisoners, end all its conflicts with ethnic minorities, cease its human rights violations, and initiate “a credible internal political dialogue with the democratic opposition and ethnic minority leaders on elements of reconciliation and reform.”⁵¹ The existing U.S. sanctions on Burma—as stipulated in section 570 of the Omnibus Consolidated Appropriations Act, 1997; Burmese Freedom and Democracy Act of 2003; the Tom Lantos Block Burmese JADE Act of 2008; and a series of executive orders⁵²—will remain in place “until we see concrete progress towards reform.”⁵³ The Obama Administration also reserves the right to implement or recommend additional, targeted sanctions if warranted by circumstances inside Burma. The Obama policy will continue the past practice of cooperating with the international community to foster the desired changes inside Burma, including an intensified effort to engage with ASEAN, China, and India.

Since its announcement of a new Burma policy, the Obama Administration has held several direct discussions with SPDC officials, including the first ASEAN-U.S. leaders meeting in Singapore on November 15, 2009, which both President Obama and Burma’s Prime Minister General Thein Sein attended. A few days prior to the ASEAN-U.S. leaders meeting, U.S. Assistant Secretary of State for East Asia and the Pacific Kurt Campbell and Deputy Assistant Secretary of State Scot Marciel traveled to Burma to meet with Burma’s Prime Minister Thein Sein—the highest level U.S. delegation to visit Burma in 14 years.⁵⁴ Campbell and Marciel also met with Aung San Suu Kyi and leaders of other opposition parties and ethnic minorities. Assistant Secretary of State Campbell also visited Burma on May 9-10, 2010, and had meetings with SPDC officials, NLD leaders (including Aung San Suu Kyi), and leaders from various ethnic minority groups.

Since the adoption of the new Burma policy, the SPDC has taken a series of steps contrary to the stated U.S. goals in Burma, including the promulgation of the five election laws. When asked during the State Department’s daily press briefing on March 10, 2010, for signs of progress in

⁴⁹ Ko Htwe, “Junta Rejects International Election Observers,” *Irrawaddy*, May 12, 2010.

⁵⁰ U.S. Department of State, “U.S. Policy Toward Burma,” press release, September 28, 2010.

⁵¹ *Ibid.*

⁵² These include Executive Orders 13047, 13310, 13448, and 13464

⁵³ *Ibid.*

⁵⁴ Tim Johnston, “Scant Details on Reaction to U.S. Envoys’ Burma Visit,” *Washington Post*, November 6, 2009.

Burma that have come out of the new policy, Assistant Secretary Philip J. Crowley stated that “so far, those results are lacking.”⁵⁵

After Crowley’s comment, the SPDC decided to release and return U.S. citizen Kyaw Zaw Lwin (aka Nyi Nyi Aung). On February 10, 2010, a Burmese court convicted Kyaw on what the U.S. government considered “politically motivated charges,”⁵⁶ and sentenced him to three years in jail. Kyaw was released from Insein Prison on March 18, 2010, and returned to the United States.

Despite the apparent lack of progress towards achieving U.S. goals in Burma, Crowley informed the press in March 2010, “We are going to continue to have discussions with Burma, and I’m sure that in a variety of different fora others will have the same kind of discussion. I doubt that we’re the only ones who are disappointed with the direction that they’re taking at this point.”⁵⁷ Assistant Secretary Campbell reportedly said on April 14, 2010, “We do think we have been able to pass some consequential messages but overall, I would say that we are going to need to see some steps on the part of the leadership in (Burma) to sustain this process going forward.”⁵⁸ Following his May 2010 trip to Burma, Assistant Secretary Campbell stated that the Obama Administration was “profoundly disappointed by the response of the Burmese leadership.”⁵⁹

Congressional Concerns

There are also signs of disappointment in the Burmese government’s behavior among some Members of Congress. Nine Senators sent a letter to President Obama on March 26, 2010, urging the imposition of additional economic sanctions on the SPDC in light of the “a set of profoundly troubling election laws.”⁶⁰ The letter specifically asks the President to fulfill four provisions of the Tom Lantos Block Burmese JADE Act of 2008 (P.L. 110-286): (1) the appointment of a special representative and policy coordinator for Burma; (2) the imposition of additional banking sanctions; (3) the submission by the Secretary of the Treasury to certain congressional committees of a report “containing a list of all countries and foreign banking institutions that hold assets on behalf of senior Burmese officials”; and (4) the submission by the Secretary of State to certain congressional committees of a report on countries, companies, and other entities that provide military or intelligence aid to the SPDC. Both of the reports mentioned in the letter were due no later than 180 days after the enactment of the law, and annually thereafter.

Also, following the release of Burma’s election laws, Senator Mitch McConnell issued a press release stating:

The edict issued by Burma’s State Peace and Development Council (SPDC) guarantees a profoundly undemocratic election by a profoundly undemocratic regime. If initial reports are accurate, it is no surprise that the law is a complete farce. By prohibiting Aung San Suu Kyi, political prisoners and Buddhist monks from participation, the junta makes clear that the only purpose of the upcoming election is simply to keep the SPDC in power.⁶¹

⁵⁵ U.S. Department of State, “Daily Press Briefing,” press release, March 10, 2010.

⁵⁶ U.S. Department of State, “Burma: Conviction of Kyaw Zaw Lwin,” press release, February 10, 2010.

⁵⁷ U.S. Department of State, “Daily Press Briefing,” press release, March 10, 2010.

⁵⁸ Tim Johnston, “US Envoy Meets Burma’s Aung San Suu Kyi,” *Financial Times*, May 9, 2010.

⁵⁹ U.S. Embassy in Rangoon, Burma, “Assistant Secretary Campbell’s Remarks on Visit to Burma,” press release, May 10, 2010.

⁶⁰ “Letter to the President,” March 26, 2010.

⁶¹ Office of Senator Mitch McConnell, “Statement of Senator McConnell on Burma’s Election Laws,” press release,

Congressional disappointment with recent SPDC actions is not limited to the election laws. For example, following the release of Kyaw Zaw Lwin, Senator John Kerry released the following statement:

Sadly, while he is coming home, Burma's junta continues to hold its grip on 2,200 political prisoners.... In concert with our friends and partners in East Asia and around the world, the United States must redouble its efforts to persuade the junta to open discussions with the opposition and ethnic groups, to conduct genuinely free and fair elections, and to honor the aspirations of the Burmese people for a peaceful transition to democratic rule.⁶²

Some in Congress discern other points of progress in Burma over recent months. For example, Senator Jim Webb had a different interpretation of Kyaw Zaw Lwin's release and recent events in Burma, stating "Since my visit to Burma last August, the military government has made several substantive gestures that should be appropriately considered by the U.S. Department of State as opportunities to increase our engagement with Burma."⁶³

Steps Taken

The 111th Congress has already taken steps to help achieve U.S. goals in Burma. Title III of the Consolidated Appropriations Act, 2010 (P.L. 111-117) bans debt restructuring assistance to Burma until the Secretary of the Treasury "determines and notifies the Committees on Appropriations that a democratically elected government has taken office." Section 7071 of the law also requires the Secretary of Treasury to instruct the U.S. representative to all international financial institutions to which the United States is a member to "oppose and vote against the extension by such institution of any loan or financial or technical assistance or any other utilization of funds of the respective bank to and for Burma." In addition, the law provides "no less than \$36,500,000" to support democracy and humanitarian programs in Burma, and that any new programs supported by these funds "shall only support activities that are consistent with the principles and goals of the National League for Democracy in Burma."⁶⁴

In July 2009, the 111th Congress passed H.J.Res. 56 (P.L. 111-42) renewing the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61) through 2012 and extending the trade sanctions for another year. Also, the Supplemental Appropriations Act, 2009 (P.L. 111-32) provided \$10,000,000 for humanitarian assistance for individuals and communities impacted by Cyclone Nargis. In addition, on May 21, 2009, the Senate passed S.Res. 160 condemning and deploring the "show trial" of Aung San Suu Kyi, calling for the release of all political prisoners, and pressing the SPDC to "establish, with the full and unfettered participation of the National League for Democracy and ethnic minorities, a genuine roadmap for the peaceful transition to civilian, democratic rule." On May 7, 2010, the Senate passed by unanimous consent S.Res. 480 that, among other things, called upon "the Secretary of State to assess the effectiveness of the policy of engagement with the military regime in Burma in furthering United States interests."⁶⁵

March 10, 2010.

⁶² Office of Senator John Kerry, "Chairman Kerry Statement on the Release of American Citizen Held in Burma," press release, March 18, 2010.

⁶³ Office of Senator Jim Webb, "Statement of Senator Webb on the Release of American Citizen Kyaw Zaw Lwin in Burma," press release, March 18, 2010.

⁶⁴ The Omnibus Appropriations Act, 2009 (P.L. 111-8) contained similar provisions.

⁶⁵ S.Res. 480.

Pending Resolutions

Three other resolutions have been introduced in the 111th Congress pertaining to Burma, and are awaiting possible action. H.Res. 898, introduced on November 6, 2009, extends the list of actions to be taken to promote democracy in Burma, adding such items as full implementation of the JADE Act of 2008, a U.N. resolution imposing multilateral sanctions and complete arms embargo of Burma, and a call for the Administration to support a U.N. Security Council Commission of Inquiry to investigate the Burmese regime's war crimes, crimes against humanity, and system of impunity. S.Res. 311, introduced on November 13, 2009, calls for the Administration to initiate negotiations for a free trade agreement with ASEAN, but stipulates

any pending bilateral issues between the United States and Burma, including economic sanctions, investment prohibition, travel restrictions or otherwise, should not deter the United States from engaging with other ASEAN nations regarding a potential free trade agreement, nor should the United States encourage trade with Burma, absent significant reforms within that country.

S.J.Res. 29 was introduced on May 5, 2010. It would renew the import restrictions contained in the Burmese Freedom and Democracy Act of 2003. According to Senator McConnell, one of the resolution's co-sponsors, renewing the sanctions was timely and important because, over the past year, the SPDC had given no clear indication that it intends to reform, but instead is "to stand up a new sham constitution and to legitimize itself in the eyes of the world through a sham election."⁶⁶

Possible Additional Congressional Actions on Burma

If the 111th Congress were to take additional actions regarding Burma, there are several options available. However, prior to taking any action, Members would have to decide whether applying more or less pressure on the SPDC is more likely to advance the achievement of U.S. goals in Burma.

As indicated, there are differences of opinion in the 111th Congress on the current situation in Burma, and whether circumstances warrant the application of more or less pressure on the ruling military junta. There are also differing opinions in the international community on whether recent events indicate progress or regress in Burma's transition to democratic civilian rule. The views of other nations may be an important factor in the effectiveness of possible additional actions taken by Congress.

One possible action would be to hold hearings on the situation in Burma. The House Committee on Foreign Affairs held a hearing on Burma on October 21, 2009; the Senate Committee on Foreign Relations held a hearing on Burma on September 30, 2009. New hearings on topics such as the upcoming Burmese elections may be useful in deciding if additional congressional action is warranted.

A second possible course of action would be to press the Obama Administration to fully enforce the provisions of the Burmese Freedom and Democracy Act of 2003 and the Tom Lantos Block Burmese JADE Act of 2008. In addition to the four provisions mentioned in the Senators' March 2010 letter to President Obama, there are other provisions in the two laws that have not been fully implemented. For example, section 6 of the Burmese Freedom and Democracy Act of 2003

⁶⁶ Senator Mitch McConnell, "S.J. Res. 29. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003; to the Committee on Foreign Relations," Statements on Introduced Bills and Joint Resolutions, *Congressional Record*, May 5, 2010, pp. S3169-S3170.

requires the Secretary of State to post on the Department of State's website the names of past and present SPDC and USDA leaders whose entry into the United States is banned under the law. Similarly, section 5(d) of the Tom Lantos Block Burmese JADE Act of 2008 requires the President to submit to the "appropriate congressional committees" a list of sanctioned Burmese officials as defined by the provisions of the act. As of the writing of this report, neither list has been supplied as required.

A third possible course of action would be to enact new sanctions on Burma, if the 111th Congress determines that *increasing* pressure on the SPDC is warranted. There are a wide range of options for additional sanctions, some of which have been mentioned or alluded to in existing legislation. Some examples are a ban on the import of products containing timber or lumber from Burma; prohibiting "United States persons" from entering into economic-financial transactions, paying taxes, or performing "any contract" with Burmese government institutions or individuals under U.S. sanctions; requiring all U.S. entities to divest their investments and cease operations in Burma; and restricting the provision of transactional services to foreign financial institutions that hold assets on behalf of senior Burmese officials.

A fourth possible course of action, if the 111th Congress determines that *decreasing* pressure on the SPDC is warranted, would be to remove or reduce some of the existing sanctions on Burma.⁶⁷ It should be noted that the laws governing many of the existing sanctions contain provisions allowing for a presidential waiver if the President determines that doing so is in national interest of the United States.

⁶⁷ For a summary of the economic sanctions on Burma, see CRS Report RS22737, *Burma: Economic Sanctions*, by Larry A. Niksch and Martin A. Weiss.

Appendix. Map of Burma (Myanmar)

The United States officially refers to the country as Burma, and recognizes Rangoon as its capital. The SPDC officially renamed their country, “the Union of Myanmar,” in 1989 and relocated the capital to Nay Pyi Taw in 2005.



Source: University of Texas at Austin's Perry-Castaneda library website, http://www.lib.utexas.edu/maps/middle_east_and_asia/txu-oclc-124072555-burma_admin_2007.jpg, adapted by CRS.

Author Information

Michael F. Martin
Specialist in Asian Affairs

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